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A FEE COLLECTION MECHANISM FOR THE OIL POLLUTION LIABILITY AND COMPENSATION LEGISLATION

Michael W. Christensen
Maryann B. Froehlich



AUGUST 1978
FINAL REPORT

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U.S. DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD
Office of Marine Environment and Systems
Marine Environmental Protection Division
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16. Abstract <p>The Presidential Initiatives for the reduction of oil pollution of our nation's waters (17 March 1977) mandated "a study of the fee collection mechanism for the comprehensive oil pollution fund".</p> <p>The proposed legislation creates a \$200 M fund called "Superfund" to cover clean up costs and to compensate victims for damages from oil pollution. The fund will be sustained by a fee not to exceed \$.03 per barrel on all oil domestically produced and imported.</p> <p>Separate collection schemes are required for domestic crude oil, imported crude oil and products, and exported crude oil.</p> <p>Existing reporting and collection mechanisms would be modified to accommodate this fee collection mechanism.</p>			
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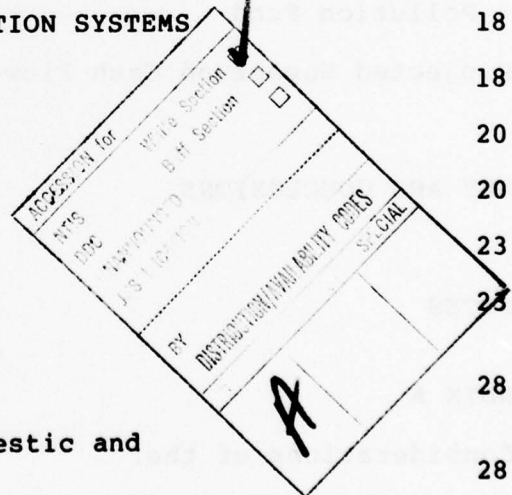


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INTRODUCTION

Over the past two decades, there has been an ever-increasing interest in the preservation of our environment. Of particular interest to much of the public, as well as several government entities, is the protection and preservation of marine and water-related resources. Widely publicized marine casualties such as the TORREY CANYON, the METULA, the SANSINENA, and the ARGO MERCHANT have contributed significantly to the heightened awareness and concern about spills of oil on our nation's waters. The recent AMOCO CADIZ disaster has sharpened this focus and may become a benchmark against which future anti-pollution efforts will be evaluated.

Following the TORREY CANYON spill, it became apparent that, while it was important to develop equipment and methods to respond to and clean up oil spills, there must also exist a vigorous program dedicated to the prevention of these spills. To that end, the 1972 Amendments to the Federal Water Pollution Control Act (FWPCA) established, as national goals, safe water by 1983 and clean water by 1985. The prevention programs spawned by the FWPCA, along with innumerable research projects, have given the nation a very good start on achieving the goals set by legislation.

Prior to passage of the Water Quality Improvement Act (WQIA) in 1970, the United States had limited authority in the protection of our nation's waters from pollution by oil. Historic authority was generally limited to the enforcement of rather vague laws; for example, the Refuse Act of 1899. The President, by authority of the WQIA, through Executive Order 11548, delegated responsibilities to the Environmental Protection Agency and the United States Coast Guard, naming them as the agencies responsible for receiving reports of, and investigating, oil spills in and on the waters of the United States. The WQIA was substantially superceded by the 1972 amendments to the Federal Water Pollution Control Act and Executive Order 11735. Following marine pollution incidents in 1976 and early 1977 (the ARGO MERCHANT and the OLYMPIC GAMES), a major piece of legislation was passed - the 1977 amendments to the FWPCA, known as the Clean Water Act.

Despite their environmental damage, the massive oil spills of the past are proving to be friends of the environment. For without their occurrence, the important pieces of environmental legislation and international agreements on pollution may never have come to pass. It has been determined that, since 1973, there has been an average of about 11,000 oil spills per year in U.S. waters from all sources, (e.g. vessels, vehicles, facilities and pipelines) spilling an average of 17 million gallons per year (see Figure 1).

While newsworthy, the massive spills from vessels like the ARGO MERCHANT appear to be not nearly as environmentally harmful as the tremendous number of minor to medium size spills. The large, or "major", spills generally affect a relatively small geographic area. When these spills are compared to the frequency of the minor and medium sized spills dispersed over a wide area, the environmental damage of the major spills appear far less significant than the damage wreaked upon the environment by the far more numerous minor and medium spills. Since 1970, the United States has increased its importation of petroleum and petroleum products at an average annual rate of 13.4% (see Table 1). That means that we are bringing in 132% more petroleum today than we were in 1970. The importation of crude oil, during the same period, has increased at an alarming 339%. This importation increase directly reflects the increase in the transportation of petroleum products with an attendant increase in the potential for oil pollution.

Oil-carrying vessels, i.e., tankers and tankbarges account for about one-third of the number of oil pollution incidents and about two-thirds of the total volume of oil spilled, (see Table 2). One additional factor that may not be readily apparent is that in 1970, the nation was aware of less than 50% of the oil spill incidents in the United States. As previously stated, with the advent of the FWPCA Amendments and their penalties for failure to report an incident, we now estimate that over 80% of oil spills in U.S. waters are, in fact, reported and investigated. Taking both factors into account, i.e., increased shipment of oil and more accurate reporting of oil spills, and comparing them to a stable spill incidence trend, shows that we are making tremendous strides towards national goal achievement.

TABLE 1
PETROLEUM STATISTICS
ANNUAL

IMPORTS AND DOMESTIC PRODUCTION
(in millions of barrels)

<u>YEAR</u>	<u>CRUDE OIL</u>			<u>REFINED PRODUCTS</u>	
	<u>DOMESTIC PRODUCTION</u>	<u>IMPORTS</u>	<u>TOTAL CRUDE INPUT TO REFINERIES</u>	<u>IMPORTS</u>	<u>TOTAL SUPPLY</u> (Crude plus Refined Product)
1960	2,575	372	2,947	293	3,240
1965	2,849	452	3,301	449	3,750
1970	3,517	483	3,600	765	4,365
1971	3,454	613	4,067	819	4,886
1972	3,455	811	4,266	924	5,190
1973	3,361	1,184	4,545	1,099	5,644
1974	3,203	1,269	4,472	962	5,434
1975	3,057	1,498	4,555	712	5,267
1976	2,972P	1,935P	4,907	735P	5,642
1977	3,148E	2,119E	5,267	782E	6,049

P= Preliminary

E= Estimated from average barrel per day produced or imported into the U.S. reported in U.S. Department of Energy, Monthly Energy Report, April, 1978.

SOURCES: U.S. Department of Energy, Bureau of Mines, Minerals Yearbook (Selected Issues);

U.S. Department of Energy, Monthly Energy Review, April, 1978.

TABLE 2
POLLUTION STATISTICS
OIL ONLY
SOURCES
1977

	Number of Incidents	% of Total	Volume in Gallons	% of Total
<u>VESSELS</u>				
1. Dry Cargo Ships	364	3.4	71,060	0.4
2. Dry Cargo Barges	34	0.3	1,195	0.0
3. Tank Ships	535	5.0	9,808,048*	55.7
4. Tank Barges	1,036	9.8	1,568,688	8.9
5. Combatant Vessels	179	1.7	12,412	0.1
6. Other Vessels	1,373	12.9	177,868	1.0
TOTAL	3,521	33.1	11,639,271	66.1
<u>LAND VEHICLES</u>				
1. Rail Vehicles	55	0.5	137,564	0.8
2. Highway Vehicles	364	3.4	369,502	2.1
3. Other/Unknown Vehicles	73	0.7	25,176	0.1
TOTAL	492	4.6	532,242	3.0
<u>NON-TRANSPORTATION-RELATED FACILITIES</u>				
1. Onshore Refinery	106	1.0	68,524	0.4
2. Onshore Bulk/Storage	208	2.0	532,053	3.0
3. Onshore Production	146	1.4	318,197	1.8
4. Offshore Production Facilities	1,084	10.2	81,011	0.5
5. Other Facilities	898	8.5	813,050	4.6
TOTAL	2,442	23.1	1,812,835	10.3
<u>PIPELINES</u>	481	4.5	2,498,025	14.2
<u>MARINE FACILITIES</u>				
1. Onshore/Offshore Bulk Cargo Transfer	410	3.9	417,581	2.4
2. Onshore/Offshore Fueling	106	1.0	19,185	0.1
3. Onshore/Offshore Nonbulk Cargo Transfer	25	0.2	1,182	0.0
4. Other Transportation Related Marine Facility	134	1.3	25,922	0.1
TOTAL	675	6.4	463,870	2.6
<u>LAND FACILITIES</u>	172	1.6	84,398	0.5
<u>MISC/UNKNOWN</u>	2,837	26.7	592,567	3.4
GRAND TOTAL	10,620	100.0	17,623,208	100.0

*Includes 9.6 million gallons from a single vessel spill

SOURCE: U.S. Coast Guard, Pollution Incident Reporting System

INTERNATIONAL AGREEMENTS ON THE PREVENTION OF
POLLUTION OF THE OCEANS

Since its inception in 1959, the Intergovernmental Maritime Consultative Organization (IMCO), one of several specialized agencies of the United Nations, has become the internationally accepted forum in which worldwide maritime problems (except those concerning rates and tariffs) are evaluated. IMCO provides the mechanism through which a great number of international agreements on safety and marine pollution have been achieved and amended. International agreements, developed under the auspices of IMCO; or for which IMCO now performs functions, can only be implemented by consent of the required number of governments acting through their individual legislative processes. Of the 22 international conventions for which IMCO is responsible, 12 directly, or indirectly, affect the transportation of crude oil or petroleum products carried in bulk at sea.

The international oil pollution prevention conventions that have been ratified by the United States are:

1. International Convention for the Safety of Life at Sea, 1948;
2. Convention on the Intergovernmental Maritime Consultative Organization, 1948;
3. International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended;
4. International Convention for the Safety of Life at Sea, 1960;
5. International Regulations for Preventing Collisions at Sea, 1960;
6. International Convention on Load Lines, 1966;
7. International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969;
8. International Regulations for Preventing Collisions at Sea, 1972; and
9. International Convention for the Safety of Life at Sea, 1974. 1/

POLLUTION STATISTICS

The following figure (Figure 1) graphically depicts the frequency and volume of oil spills from 1971 to 1977, and the frequency and volume of oil and other substance spills from 1970 to 1977.^{2/}

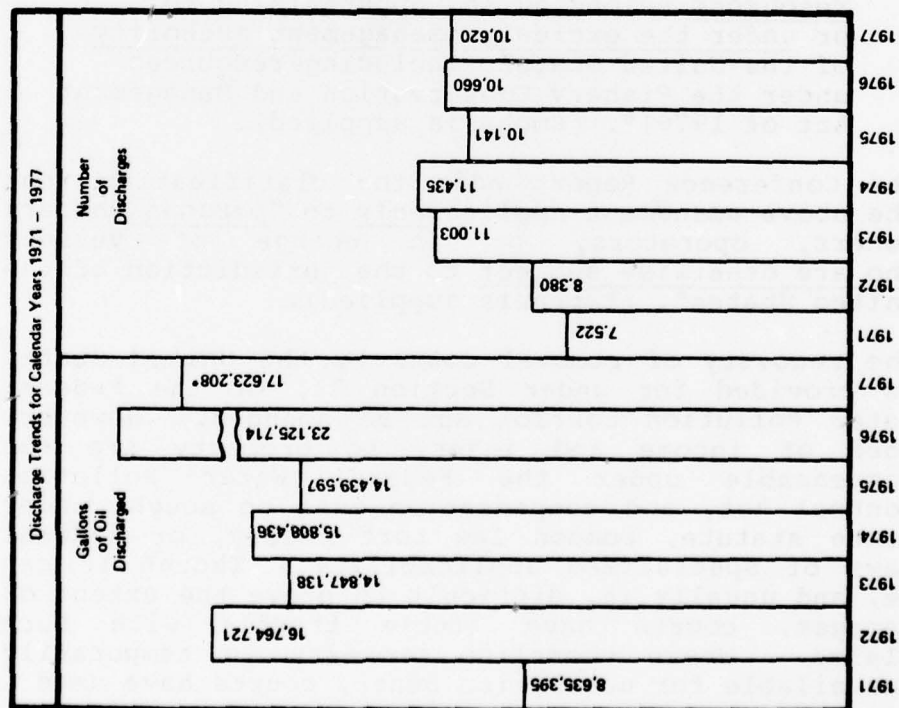
The source of these statistics is the U.S. Coast Guard Pollution Incident Reporting System (PIRS). PIRS is a computer information system implemented in 1973. It contains discharge, response, and penalty data on all discharges reported to or detected by agencies with pollution responsibilities.

Initially, PIRS was conceived as being a management tool for the Coast Guard's Marine Environmental Protection program. PIRS has become much more than a simple in-house information system. As the program developed in the early seventies, it was found that the number of users of the information contained in PIRS, as well as the diversity of disciplines of those users, far overshadowed its limited role within the Coast Guard. Today, the users include the Congress, Federal agencies, industry, academia, special interest groups, and private citizens. It is estimated that the Coast Guard now receives reports of over 80 percent of all oil spills in and around United States waters. For this reason, the data base established in PIRS has become the most comprehensive system of its type in the world.

THE NEED FOR A COMPREHENSIVE SCHEME FOR THE RECOVERY OF OIL POLLUTION DAMAGES

Our legal system has attempted to deal with the problem of oil pollution damage (to the extent that society is adversely affected) by recourse to the common-law tort actions of nuisance, negligence, and trespass. We have seen both successful and unsuccessful forms of state compensation schemes. There are several state laws on the books that attempt to deal with the problem of spill compensation. Identifiable categories of damages that have been addressed include:

Oil Only



Oil and Other Substances

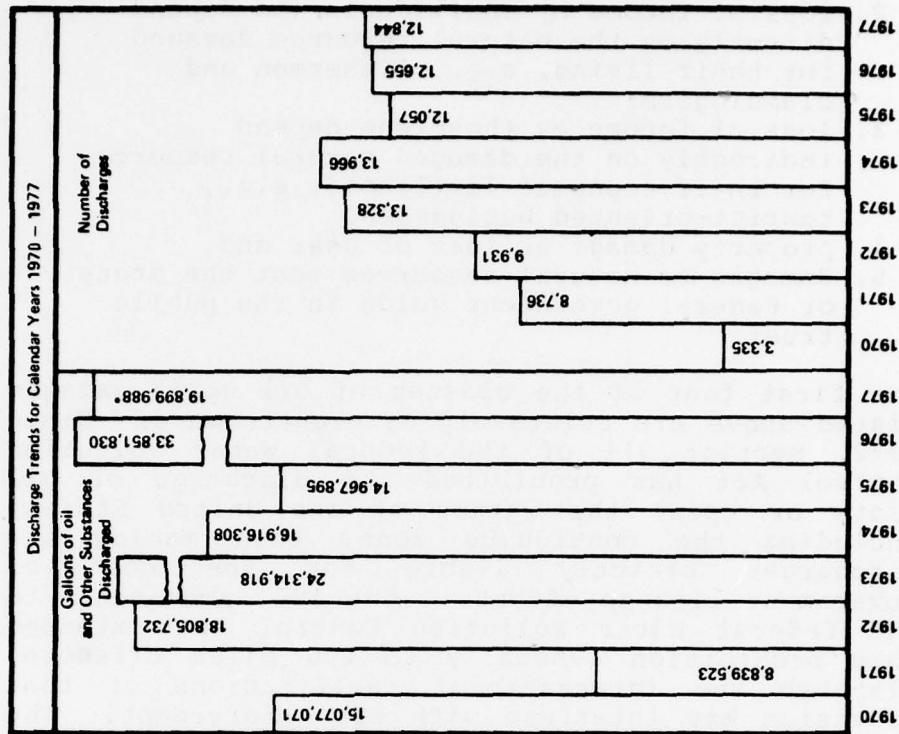


FIGURE 1

SOURCE: Pollution Incident Reporting System, United States Coast Guard
 *Includes the 9.6 M gallon KAWAIIAN PATRIOT spill; sank in international waters; monitored by the USCG

1. cleanup costs;
2. loss of income by individuals who depend directly on the natural resource damaged for their living, e.g., fishermen and clamdiggers;
3. loss of income by those who depend indirectly on the damaged natural resource for their economic livelihood, e.g., tourist-oriented businesses;
4. property damage or loss of use; and
5. damages to natural resources that the state or Federal government holds in the public trust.

The first four of the classes of oil spill damages listed above are relatively straightforward. Since 1972, Section 311 of the Federal Water Pollution Control Act has prohibited the discharge of oil "into or upon" the waters of the United States, including the contiguous zone, thus making the discharger strictly liable for the cost of government cleanup efforts. The 1977 amendments to the Federal Water Pollution Control Act extended this prohibition generally to 200 miles offshore, although the international ramifications of that provision may interfere with its enforcement. The prohibition of oil spills was broadened in 1977 to include:

"discharges....which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976)". (Emphasis supplied).

The Conference Report adds the clarification that the above amendment applies only to "persons who are owners, operators, or in charge of vessels who are otherwise subject to the jurisdiction of the United States". (Emphasis supplied).

The recovery of removal costs by the United States is provided for under Section 311 of the Federal Water Pollution Control Act as amended. However, loss of income and injury to property are not compensable under the Federal Water Pollution Control Act, and compensation must be sought under state statute, common law tort theory, or federal laws of specialized applicability. Though it can be, and usually is, difficult to prove the extent of damages, courts have little trouble with such claims. Where shoreline property is temporarily unavailable for use by its owner, courts have used

the traditional test of reduction in rental value to determine the extent of loss. Where loss of income from damages to natural resources has been claimed, there have been inconsistent decisions indicating acceptable measurements of compensation. Under pending "Superfund" legislation in Congress, "loss of income" would be a compensable category of damages after an oil spill, where a claimant derives at least 25% of his income indirectly from activities related to the use of the property or the natural resources damaged by the spill. Claimants directly using damaged property or natural resources do not have to meet the 25% of income test.

Damages to natural resources pose much more difficult questions. At this writing, no court has decided on the merits of any governmental claim for such damages. This may change, both as a result of the 1977 amendments to the FWPCA and under "Superfund" legislation. Under the amendments, now Pub. L. No. 95-217, damages to natural resources are made compensable, to the state or Federal government only, by making such damages part of the "cost of removal" of an oil spill.^{3/}

OIL POLLUTION LIABILITY AND COMPENSATION LEGISLATION

The President's 17 March 1977 environmental message to Congress mandated a series of Federal Government actions to deal with the problem of marine oil pollution. These actions were triggered by the series of oil tanker accidents which occurred in and around U.S. waters during the winter of 1976-1977. The President directed that the following objectives be achieved:

"...First, to reduce oil pollution caused by tanker accidents and by routine operational discharges from all vessels;

Second, to improve our ability to deal swiftly and effectively with oil spills when they do occur; and

Third, to provide full and dependable compensation to victims of oil pollution damage..."^{4/}

This section of the report summarizes the development of legislation designed to achieve the third objective, stated above.

In his message, the President requested approval of comprehensive oil pollution liability and compensation legislation. The Administration's proposal for this legislation was introduced to the Congress as H.R. 6213 and S. 1187. The format and substantive provisions of S. 1187 are closely followed in an alternative House bill, H.R. 6803. H.R. 6803 was passed by the House on September 12, 1977 and introduced to the Senate as an Act (Comprehensive Oil Pollution Liability and Compensation Act).

The legislation was initiated to replace the current fragmented and overlapping systems of Federal and state oil spill liability and compensation laws within a single national framework. The primary thrust of the legislation is to:

- o establish one national standard of strict liability for oil spills whether the source be vessels, pipelines, terminals, or offshore facilities;
- o establish a mechanism for pollution damage compensation and claims adjudication; and
- o specify and broaden the definition of what claims are compensable.

The legislation creates a \$200 million fund (Superfund) to cover removal costs and to compensate victims for virtually all oil pollution damages. The fund is to be maintained at a level not less than \$150 million and not more than \$200 million. The fund will be supported by a fee, not to exceed three cents a barrel on all domestic and imported oil received at terminals from vessels, ships, offshore oil production, and port facilities; as well as the Trans-Alaskan and intrastate and

interstate pipelines. Additional monies will be provided by the recovery of subrogated claims; from interest earned on, and proceeds from, Fund investments; and from penalties and fees collected for violations of oil pollution laws and regulations. Additionally, the Fund consolidates existing Federal oil pollution compensation funds: the Trans-Alaskan Pipeline Fund; the Deepwater Ports Fund; and portions of the Federal Water Pollution Control Act Section 311 (k) Revolving Fund and others.

The Fund covers claims beyond a discharger's liability or ability to pay; claims where the identity of the discharger is known but where there is a dispute over the designation of the source of the spill or a conflict over settlement; claims where the identity of the discharger is unknown; and claims where the mechanisms provided by international insurance do not provide full recovery (see Figure 2 for Claims Procedure).

Damages for which claims against the Fund may be asserted include:

- o removal costs;
- o damage to real or personal property;
- o damage to natural resources;
- o loss of earnings resulting from injury to real or personal property or natural resources, without regard to ownership; and
- o loss of use of real or personal property or natural resources.

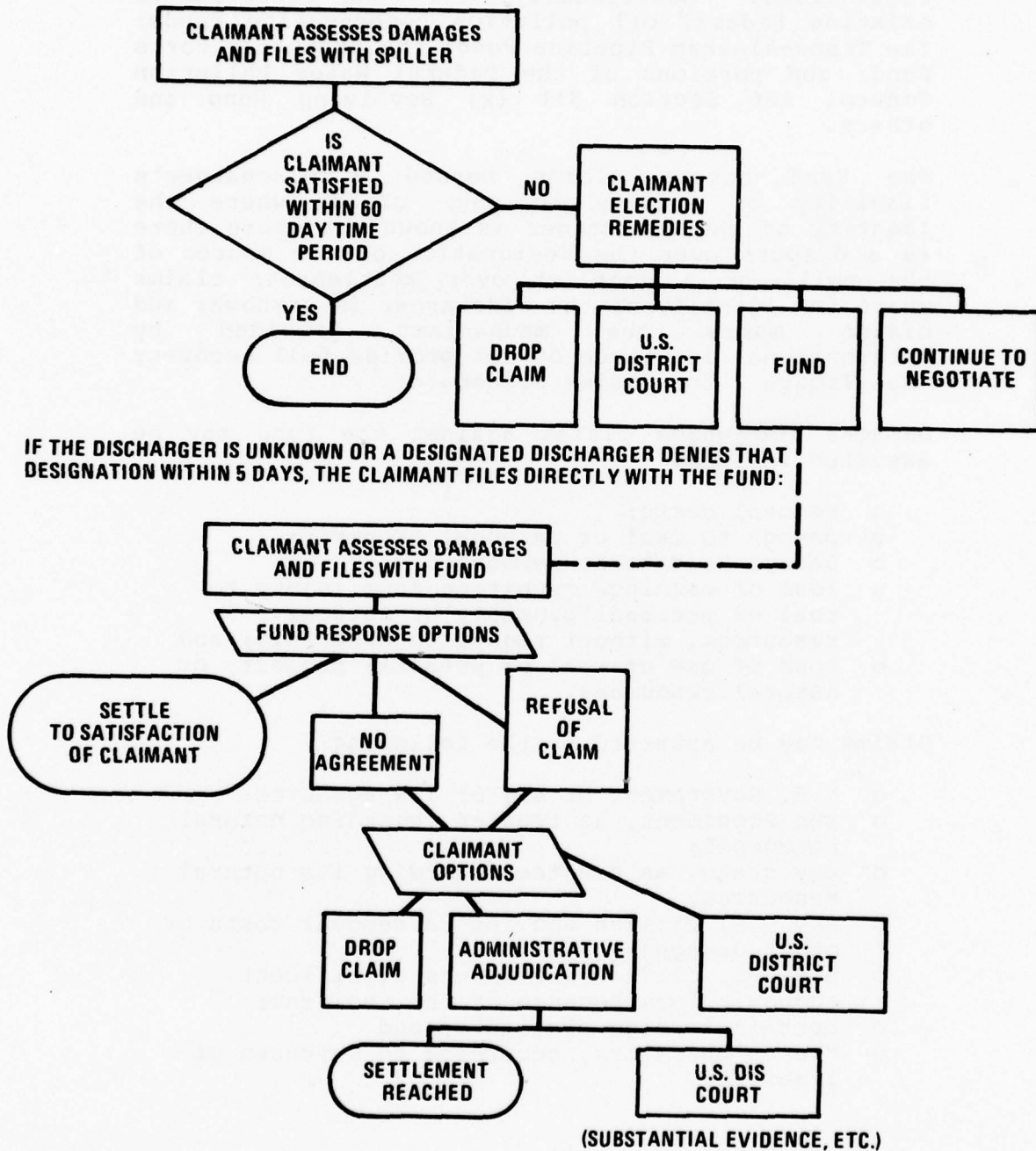
Claims may be asserted by the following:

- o U.S. Government or any of its agencies;
- o the President, as trustee regarding natural resources;
- o any state, as trustee regarding its natural resources;
- o any U.S. citizen who incurs removal costs or other damages;
- o any U.S. citizen who incurs significant economic loss because of the incident;
- o certain foreign claimants; and
- o owners/operators, according to defenses of liability.

FIGURE 2

Super Fund **CLAIMS PROCEDURE**

THE FOLLOWING CHART ILLUSTRATES THE CLAIMANT'S PROCEDURES WHEN THE DISCHARGER IS KNOWN:



Additional specific provisions of the legislation include:

- o The establishment of strict liability for the discharger with varying liability limits and limited defenses. Defenses of liability include: act of war; hostilities; civil war; insurrection; natural phenomenon of an exceptional, inevitable and irresistible character; or gross negligence or willful misconduct by a claimant;
- o The establishment of a system of notification, designation, and advertisement of a discharge. If the discharger is not known, the Fund advertises and calls for claims;
- o The establishment of claims settlement procedures utilizing claims adjusting companies in the private sector, thereby minimizing government activities in the claims settlement process. Provisions are made for adjudication of disputes in claims against the fund by either panels or administrative law judges;
- o The Administration bills propose the preemption of all compensation funds, both Federal and state. The Administration proposal does not preempt existing state authority to regulate the transportation, transfer, or storage of oil, or the authority to clean up oil spills.

H.R. 6803 and S. 1187 assign primary implementation and administration responsibility to the Secretary of Transportation. An additional bill, S. 2083, was reported by the Senate Commerce Committee with the "technical amendments" assigning implementation and administration to the Department of Commerce. Another bill, S. 2900, which was introduced on 12 April 1978 by the Senate Committee on Environment and Public Works would assign the President responsibility for administration and implementation. S. 2900 differs from the other legislation in that it establishes liability and provides compensation for pollution damages from hazardous substances as well as oil.

On the issue of preemption, H.R. 6803 is consistent with the Administration position as proposed in S. 1187. In contrast, S. 2083 preempts state authority to require contribution to compensation funds and financial responsibility laws, but expressly reserves to the states the right to impose differing liability laws.

Among the damages caused by oil pollution is a loss of income, profits, or impairment of earning capacity. Under the bills, S. 1187, S. 2083 and H.R. 6803, it is intended that any claimant who directly uses the natural resources damaged or who has a direct interest in the property damaged, would be compensated for these losses in all cases. It was recognized that there would be persons, not having an interest in the property damaged and not directly using the natural resources, who may suffer a loss; for example, the owner of a gasoline station along a route to an oil polluted beach who suffers a loss of income due to the closing of a polluted beach. The extent of this loss, and the difficulty of establishing the loss of income that is caused by the pollution incident, will vary widely. To provide for claims by this class of persons while retaining a manageable and expedient claims process, some limitation on these peripheral claims is necessary. S. 2083 does not impose a limitation on these peripheral claims. S. 1187 and H.R. 6803 require that this class of claimant establish that 25 percent of the claimant's income was derived from activities related to the property or the natural resources damaged.

As the reader can see, numerous bills have been submitted to the Congress for oil pollution liability and compensation. Addressing fee collection for each of these bills would be futile. For purposes of this report, H.R. 6803 is addressed because it has made its way furthest through the Congressional process.

MANDATE FOR FEE COLLECTION STUDY

The mandate for this study was given by the President in his 17 March 1977 environmental message.

"Along with the major actions just discussed, the President is directing the Secretary of Transportation in cooperation with the Environmental Protection Agency and other appropriate agencies, to undertake several studies of other promising programs and techniques for reducing marine oil pollution. These studies will include:

- o An evaluation of the costs and benefits of crude washing, a system which utilizes crude oil to clean cargo tanks.
- o An evaluation of design, construction and equipment standards for tank barges which carry oil.
- o A study of long range vessel surveillance and control systems.
- o An evaluation of devices to improve maneuvering and stopping ability of large tankers, with research to include the use of ship simulators.
- o A STUDY OF THE FEE COLLECTION MECHANISM FOR THE COMPREHENSIVE OIL POLLUTION FUND."
(Emphasis supplied).^{5/}

The language of H.R. 6803 and other Superfund bills states:

"The Secretary of the Treasury shall collect from the owners of refineries receiving crude oil, and from the owners of terminals receiving any oil for export or entry into the United States, whether for import or transfer to a foreign country, a fee not to exceed three cents per barrel of oil received."
(Emphasis supplied).^{6/}

GOALS OF THE FEE COLLECTION MECHANISM STUDY

The goals of this fee collection mechanism are to:

1. collect the fee from owners of refineries and terminals on all domestic and foreign oil;
2. determine the most equitable point of collection;
3. collect the fee only once on each barrel of oil; and
4. use existing Federal reporting and collection systems.

COLLECT THE FEE FROM OWNERS OF REFINERIES AND TERMINALS ON ALL DOMESTIC AND FOREIGN OIL

The language of H.R. 6803 et al stipulates that the fee be collected from the owners of refineries receiving crude oil and the owners of terminals importing or transferring oil to a foreign country. Two collection systems fit this legislation. The first system requires collection of a fee on domestic crude oil at refineries; the second system requires collection of a fee on imported crude oil and products at the point of import. (Exported crude oil and bonded fuels are dealt with in a separate discussion later in this paper).

DETERMINE THE MOST EQUITABLE POINT OF COLLECTION

The basic premise of the Superfund legislation is that it is unreasonable for a small segment of the population to bear the entire burden of costs of spills. The economic costs of damage to natural resources, spill cleanup costs, loss of income, and property damage must be borne by the entire energy-consuming public. This cost is paid by a "pass-through" of the fee to the consumer.

For domestically produced oil, a range of collection points exists, from reporting and collecting at the "well-head"; to adding the fee to the Federal Highway Trust Fund excise tax when it is collected by the retailer at the gas pump.

Collection at the well-head (the Christmas tree) is impractical because of the complexity of collection and the number of collection sites.

Collection of this pollution insurance fee as a tack-on to the Federal Highway Trust Fund excise tax would be the simplest way to collect the fee. This scheme, however simple, would be inequitable in that only the users of highways would bear the economic burden of oil pollution for all consumers of oil energy products. The most equitable point for collection of the fee on domestic oil (providing for the distribution of costs of pollution damage to the entire oil consuming market) is to assess the fee at the refinery on crude runs to stills.

An equitable point must be found to collect the Superfund fee on imported oil. A range of collection points exists, from assessing the fee at the point of entry into the United States, "...the terminal...", to adding the fee to the refined product. Adding the fee to refined products would pose innumerable collection points. An equitable distribution of costs to the entire energy consuming market occurs if the fee is collected at the time and point of importation at the terminals.

COLLECT THE FEE ONLY ONCE ON EACH BARREL OF OIL

This goal is obvious. Oil and oil products lose their identity as soon as they are mixed in tanks, pipelines, ships, and barges. Therefore, the fee must be assessed on a throughput basis, analagous to the use of water meters or gas meters in homes. Collecting the fee only once is a question of equity. In the legislation and in this report, this goal is considered to have enough merit to be identified separately.

USE EXISTING FEDERAL REPORTING AND COLLECTION SYSTEMS

Rather than establish new and separate systems for fee collection, it is the goal of this study to identify existing Federal Government reporting and fee collection systems; and, to use these systems for Superfund collections. The intent of this goal is to minimize the additional personnel and capital expenditures needed to implement and administer the Superfund.

EXISTING FEDERAL REPORTING AND COLLECTION SYSTEMS

This section of the report provides a description of existing Federal reporting and collection schemes for taxes and fees on oil and oil products. Specifically, these schemes are the collection of the Federal Highway Trust Fund excise tax; and the collection of oil import license fees.

THE FEDERAL HIGHWAY TRUST FUND

Trust funds are established by law to account for receipts which are held by the Government and earmarked for specific purposes and programs. These monies are not available for the general purposes of the Government. The Federal Highway Trust Fund is the sole source of money for the Interstate, Federal-aid primary, secondary, urban, and the Forest highway systems. The Highway Trust Fund is comprised of receipts from certain highway user taxes (for example, excise taxes on gasoline, rubber, and heavy vehicles) and reserved for use of highway construction and related purposes.

Prior to July 1, 1956, all Federal excise taxes on motor fuels, motor vehicles, and associated products were placed in the general fund of the United States Treasury, as were the receipts from practically all other Federal taxes. Appropriations for Federal aid to the states for highway improvement were made from the Treasury general fund, as were appropriations for practically all other Federal operations and grants-in-aid.

The Federal highway program was placed on a wholly pay-as-you-build basis by the Federal-Aid Highway and Revenue Acts of 1956. By those acts, the Congress considerably increased the size of the continuing Federal-aid program for improvement of main highways, secondary roads, and urban arterials included in the Federal-aid primary and secondary systems, and provided for the accelerated completion of the National System of Interstate and Defense Highways. To pay for these programs, Congress increased some of the motor vehicle-related excise taxes and levied some new ones. It earmarked the revenues of some (but not all) of the motor vehicle-related excise taxes to go into the Highway Trust Fund, which the 1956 legislation created.

All of the revenues from the Federal taxes on truck and bus parts and accessories, heavy vehicle use, and the highway transportation use of lubricating oils go into the Highway Trust Fund. Motor fuel and rubber tax revenues, excluding the tax on aviation and boating use of these products, also go into the Fund.

The motor vehicle-related Federal excise taxes are collected by the Treasury Department's Internal Revenue Service from the producer, or the retailer in the case of the tax on diesel and special fuels, not directly from the consumer (except for the annual use tax on heavy vehicles). Most of these taxes are paid to the IRS district office nearest the place of production, manufacture, import, or the main office of the company. Thus, IRS receives more than half of the Federal gasoline tax payments in just four states: California, Oklahoma, Pennsylvania, and Texas. Most of the rubber tax payments are collected in Ohio. The majority of the new truck, bus, and trailer tax payments are collected in Michigan and its neighboring states.

The taxes collected are passed along through distributors and dealers and are ultimately paid by consumers at the new vehicle showroom, garage, or gas pump. There is little relation between the places of first collection, and final payment.

The Highway Trust Fund is not a physical entity in which revenues are deposited, but only a bookkeeping entry of the United States Treasury. It is an accounting arrangement whereby certain revenues accruing to the Federal Government are separated from other sources of income. The taxes are not deposited in the Trust Fund but in the General Fund of the Treasury. Amounts equivalent to these taxes are transferred from the General Fund to the Trust Fund. Transfers are made at least monthly on the basis of estimates made by the Secretary of Treasury and later adjusted on the basis of actual tax receipts.

OIL REPORTING MECHANISM

The refineries currently report domestic and foreign crude runs to stills monthly on the Department of Energy, Monthly Refinery Report FEA-P-320-M-O (Figure 3). Data on the refinery report are collected under the mandatory report authority vested in the Department of Energy under Public Law 93-275. "The refinery report must be completed by all refinery companies or other firms for each refinery operated or controlled by them." Data must be submitted to the Department of Energy via U.S. Mail by the twentieth calendar day following the report month. The information on the refinery report is used to compile public statistical reports which are prepared by the Department of Energy.

FEDERAL EXCISE TAX PAYMENT

Federal Excise Tax (FET) payments are made twice monthly by the oil companies as producers of taxed petroleum products. Payments are made by deposit in an authorized commercial bank or Federal Reserve Bank. The Internal Revenue Service requires that Federal excise tax deposits be made on or before the ninth day following the semimonthly FET report period, i.e., the ninth and twenty-fourth of each month. Although taxes are deposited semi-monthly, they are not reported until the end of a quarter. At that time, producers of taxed products file a Quarterly Federal Excise Tax Return, IRS Form 720, (Figure 4). Quarterly returns must be filed by the end of the first month following the quarter.

FIGURE 3

Company data will be treated as confidential and proprietary to the extent that it is entitled to such treatment under Section 14 of the Federal Energy Administration Act of 1974

FEDERAL ENERGY ADMINISTRATION

Code 2880

Washington, D.C. 20462

REFINERY REPORT

(FEA-P320-M-0)

Approved by GAO
B-181254 (R0286)
Expires 10-31-78

This report is being collected under mandatory authorities vested in the Federal Energy Administration under Public Law 93-275. The Bureau of Mines is the data collection agent for FEA.

Report Type: **B 0 1**FEA Company Identification Number: Report Date (last day of reporting month): Mo Da YrZIP Code of Refinery Location: If resubmission, insert X in block ☐

Refinery Name: _____

#

B01-A. REFINERY STOCKS, RECEIPTS, INPUTS, PRODUCTION AND SHIPMENTS

[Thousands of barrels of 42 gallons]

ITEM DESCRIPTION	PRODUCT CODE	STOCKS BEGINNING OF MONTH	RECEIPTS DURING MONTH	INPUTS DURING MONTH	PRODUCTION DURING MONTH	SHIPMENTS, LOSSES AND REFINERY FUEL USE DURING MONTH	STOCKS END OF MONTH
Crude oil (incl. lease condensate)							
Domestic	010				X		
Foreign	020				X		
Products of natural gas proc. plants							
Ethane	110				X		
Propane	231				X		
Isobutane	233				X		
Normal butane	235				X		
Other butanes	236				X		
Butane-propane mixtures	234				X		
Natural gasoline and isopentane	220				X		
Plant condensate	210				X	X	
¹ Total domestic nat. gas liquids	230				X		
¹ Total foreign nat. gas liquids (receipts only)	239	X		X	X	X	X
Other hydrocarbons and hydrogen consumed as raw materials	090				X	X	
Unfinished oils:							
¹ Domestic	813						
¹ Foreign (receipts only)	814	X		X	X	X	X
Gasoline:							
Total Motor	131			X			
Leaded (shipments only)	132	X	X	X	X		X
Unleaded (shipments only)	133	X	X	X	X		X
Aviation	111			X			
Special naphthas (solvents)	051			X			
Jet fuel:							
Naphtha-type	211			X			
Kerosine-type	213			X			
Kerosine (including range oil)	311			X			
Distillate fuel oil, Less No. 4	412			X			

FIGURE 4

Form **720**
(Rev. Dec. 1976)
Department of the Treasury
Internal Revenue Service

Quarterly Federal Excise Tax Return

Use to report
Excise Taxes
for 1977.

Part I

Facilities and Services	Rate	Tax	IRS No.	Products and Commodities	Rate	Tax	IRS No.
Toll telephone service	5%		22	Diesel fuel and special motor fuels	(*)		61
Teletypewriter exchange service							
Local telephone service							
Transportation of persons by air	8%		26	Gasoline (manufacturers tax)	4¢ gal.		62
Use of international air travel facilities	\$3.00 per person		27	Fuel used in noncommercial aviation { Fuel other than gasoline	7¢ gal.		69
Transportation of property by air	5%		28	Gasoline (retailers tax)	3¢ gal.		14
Policies issued by foreign insurers	(*)		30	Lubricating oil	6¢ gal.		53
Manufacturers							
Truck, bus, and trailer chassis and bodies; tractors	10%		33	Tires { highway vehicle type	10¢ lb.		66
Parts or accessories for trucks, etc.	8%		48	laminated	1¢ lb.		
Fishing rods, etc., and artificial lures, etc.	10%		41	other	5¢ lb.		
Bows and arrows	11%		44	Inner tubes	10¢ lb.		67
Pistols and revolvers	10%		32	Tread rubber (camelback)	5¢ lb.		68
Firearms	11%		46				
Shells and cartridges	11%		49				
				TOTAL TAX (Enter here and in item 1 below.)			
				*See instructions on page 2.			

Part II

1. Total tax. (Before making entries in items 1 to 9, compute your total tax in Part I above.)

2. Adjustments. (See instructions. Attach statement explaining adjustments.)

3. Tax as adjusted. (Item 1 plus or minus item 2.)

4. (a) Record of Tax Liability. (See instructions on page 4.)

Period	Amount of Liability	Date of deposit	Amount
First Month	1st-15th day		
	16th-last day		
	Total for month		
Second Month	1st-15th day		
	16th-last day		
	Total for month		
Third Month	1st-15th day		
	16th-last day		
	Total for month		
(c) Total Liability for Quarter			
(d) Final deposit made for quarter (see note under item 7)			
(e) Total deposits for quarter (including final deposit made for quarter)			
5. Overpayment from previous quarter			
6. Total deposits (item 4(e) plus item 5)			
7. Undeposited taxes due (item 3 less item 6; this should be \$100 or less). Pay to Internal Revenue Service			
Note: If undeposited taxes due at the end of the quarter are more than \$100, the entire balance must be deposited. This deposit must be entered in the deposit schedule above in item 4(d).			
8. If item 6 is more than item 3, enter excess here \$ and check if you want it: <input type="checkbox"/> applied to your next return, or <input type="checkbox"/> refunded to you.			
9. If not liable for returns in succeeding quarters, write "FINAL" here and return this form to your Internal Revenue Service Center.			

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct and complete.

Signature Title (Owner, etc.) Date

Please enter your name, address, employer identification number, and calendar quarter of return, if not printed. (If not correctly printed, please change.)

Quarter ending

Employer identification number

If your address is now different from previous return, check here ☐

Please return this form to your Internal Revenue Service Center
(See last item of instructions, "Where to File")

Form **720** (Rev. 12-76)

IMPORTED OIL REPORTING MECHANISM

This section of the report details the reporting and collection mechanisms existing within the Federal Government which are adaptable for Superfund fee collection on imported oil.

All importers of crude oil and oil products are required by the U.S. Bureau of Customs to file Form 7501, Consumption Entry or Form 7505, Warehouse Withdrawal For Consumption (Figures 5 & 6), when the oil enters the commerce of the United States. These forms serve as the U.S. Customs record of entry of goods. The reports record the amount and type of oil imported; the amount of duty due; and the license under which the oil is imported. The report is filed by the importer or his broker and certified by the Customs agent at the port of entry. (Import duties must be paid within 10 business days following entry of the oil into U.S. commerce).

IMPORTED OIL COLLECTION MECHANISM

The process of collecting fees on import licenses is divided into three stages: the issuance of an oil import license by the Department of Energy; the processing of oil at the port of entry by U.S. Customs; and the billing of import license fees by the Department of Energy.

1. Issue of Oil Import License: The Department of Energy, Office of Oil Imports, is required under 10 CFR, Part 213, Oil Import Regulations to issue licenses to all oil importers. The import license (Figure 7) specifies the amount of crude oil and unfinished oils or finished products that may be imported; and the time period (not to exceed one year) during which the license is in effect. Importers may be issued more than one license. An importer may be issued one of three types of licenses, depending upon the conditions specified in 10 CFR, Part 213, Oil Import Regulations. These licenses are: fee-free; fee prepaid; and fee guaranteed by bond and paid monthly. The importer receives a license from the Department of Energy. A copy is sent to the District Director of Customs at the point of entry for customs processing.

RECORD COPY ☐
CASHIER'S COPY ☐

I declare that I am the ☐ nominal consignee and that the actual owner for customs purposes is as shown above, ☐ consignee or agent of the consignee. I further declare that the merchandise ☐ was or ☐ was not obtained in pursuance of a purchase or agreement to purchase. I also include in my declaration all the statements in the declaration on the back of this entry.

suance of a purchase or agreement to purchase. I also include in my declaration all the statements in the declaration on the back of this entry.

24

DATE ☐ Principal.
☐ Member of the firm.
 (nature) ☐ of the corporation
 (Title)
 (address) ☐ Authorized agent.

FIGURE 6

Customs Form 7505
TREASURY DEPARTMENT
8.40 C.M.; 8.37, 10.04, 13.4, 19.11,
19.15 C.R.
March 1961

DUTY PAID

Form approved.
Budget Bureau No. 48 R211.8

WAREHOUSE WITHDRAWAL FOR CONSUMPTION

This Space for Census Use Only		BUREAU OF CUSTOMS		This Space for Customs Use Only	
BLOCK AND FILE NO.				WITHDRAWAL NO. AND DATE	
Port of Entry Name				Whse. Bond No. and Date	
Importing Vessel (Name) or Carrier				Date of Importation	
Merchandise Entered By					

MARKS & NUMBERS OF PACKAGES COUNTRY OF ORIGIN OF MERCHANDISE (1)	DESCRIPTION OF MERCHANDISE IN TERMS OF U.S.I.D. ANNO., NO. AND KIND OF PACKAGES (2)	NET QUANTITY IN U.S. I.D. ANNO. UNITS (2a)	ENTERED VALUE IN U.S. DOLLARS (3)	U.S.I.D. ANNO. REPORTING NO. (4)	TARIFF OR I.R.C. RATE (5)	DUTY AND I.R. TAX (6)	
						Dollars	Cents

Bond	
Withdrawal	
Balance	

Warehouse	
Withdrawer	
Withdrawer hereby authorized to withdraw the above-described merchandise. <div style="text-align: center;">----- (Importer)</div>	

(Date)

(Withdrawer)

Three copies are required for use at port of withdrawal; two for the collector and one as a statistical copy.
This form may be printed by private parties provided it conforms to official form in size, wording, color, arrangement, and quality of paper. For sale by collectors of customs.

FIGURE 7

License No. 24-007753

Date Issued: Dec. 20, 1977

NOT TRANSFERABLE

S A M P L E

Office of Oil Imports
Federal Energy Administration
Washington, D. C. 20461

IMPORT LICENSE

Name and Address of Licensee:

Fugaro Oil Company
400 7th Street, S.W.
Washington, D. C.

The licensee named above is hereby authorized to enter for consumption or withdrawal from warehouse for consumption in accordance with the terms and conditions specified herein the commodity herein designated. This license is expressly subject to, and does not relieve the licensee from compliance with the provisions of the Code of Federal Regulations of the Federal Energy Administration and any other restrictions, rules or regulations applicable to the importation of such commodity. The quantity in barrels entered or withdrawn pursuant to this license shall be identical with that used for customs liquidation purposes.

The terms used herein shall have the same meaning as in the Code of Federal Regulations.

DESIGNATION OF COMMODITY - TERMS AND CONDITIONS OF IMPORTATION

1. Commodity: Crude and unfinished petroleum oils

2. Quantity (Barrels Adjusted to 60°F): -1,000,000-

Within the quantity authorized, no more than -0-

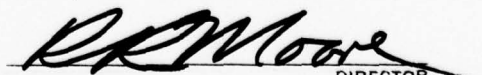
barrels may be imported in the form of unfinished oils.

3. For entry for consumption or withdrawal from warehouse for consumption at any port of entry or from any Customs warehouse in Districts I-IV.

THIS LICENSE SHALL BE IN EFFECT FOR THE PERIOD WHICH BEGINS May 1, 1977
AND ENDS April 30, 1978 UNLESS REVOKED PRIOR THERETO.

(Seal)

NOTE: Issued pursuant to 10 CFR, Chapter II,
Part 213.29.


DIRECTOR
Office of Oil Imports

Any person who violates any provision of this license or of the oil import regulations pertaining thereto is subject to the penalties provided by law.

NOT TRANSFERABLE
(OVER)

8

2. Bureau of Customs Processing of Oil Imports: Oil is permitted entry into the United States only after verification, by Customs inspectors of an importer holding a valid Department of Energy import license. A license is considered valid if the number of barrels specified on the license to be imported has not been exceeded by the current or previous imports. Licenses remain in Customs custody until fully depleted or expired, at which time they are terminated and returned by Customs to the Department of Energy, Office of Oil Imports.

An importer holding a valid license files U.S. Customs Form 7501 or 7505, pays the duty required, and imports the oil into the U.S. Each oil company importing crude oil, unfinished oils, or finished products must enter upon Customs entry Form 7501/7505 the number of the oil import license against which such entry is being charged. A copy of the 7501/7505 is sent by Customs to the Department of Energy, Office of Oil Imports.

3. Department of Energy Billing of Import License Fees: Monthly, the Department of Energy, Office of Oil Imports, submits a statement of account to each importer of oil. The statement shows the status of every import license currently held by the company and bills the company for any import license fees due. Fees are assessed at the rate of \$.21 per barrel for crude oil and natural gas products and \$.63 per barrel for finished and unfinished products, for other than fee-free licenses. Fees are based on the volume of oil reported on U.S. Customs Forms 7501/7505, copies of which are provided to the Department of Energy by Customs at the time of import.

Billing of the importer occurs in the calendar month following the month the fee is incurred. The license fee is incurred when imported oil is released from customs custody, or withdrawn from bonded warehouse for consumption. With respect to licenses against a bond, fees must be paid to the Department of Energy, Office of Oil Imports, no later than the last day of the month following the month the fee is incurred.

FINDINGS

THE SOURCE AND DISPOSITION OF DOMESTIC AND FOREIGN CRUDE OIL

The following figure (Figure 8) graphically depicts the flow of crude oil through the transportation system. This figure serves as an introduction to the findings of this report. In the center of the figure is a refinery. The left side of the figure depicts the flow of domestic oil to the refinery. The right side of the figure depicts the flow of imported crude and unfinished oils.

PROPOSED DOMESTIC OIL SUPERFUND FEE COLLECTION

It is proposed that the Superfund fee collection mechanism for domestically produced oil parallel the collection of revenues for the Highway Trust Fund. That is to say, the Internal Revenue Service mechanism for the reporting and collection of Federal excise taxes can be adapted to accommodate the Superfund fee collection on domestic oil. This proposal will require a modification to the Quarterly Federal Excise Tax Return (IRS Form 720) to allow reporting and collection of the Superfund fee.

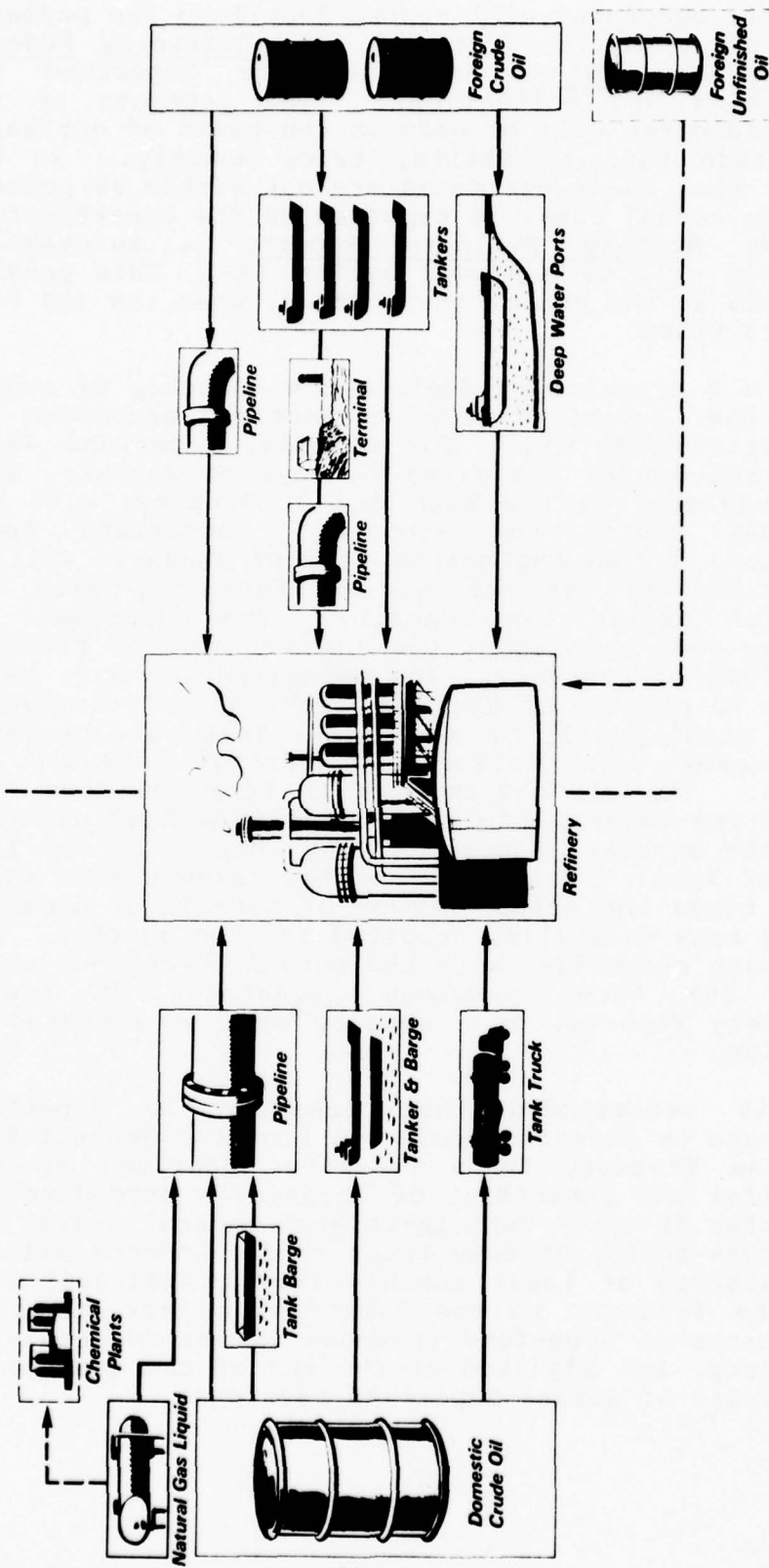
It is additionally proposed that the oil companies base payment of the Superfund fee on the number of barrels of domestic crude oil reported as input to a refinery on the Department of Energy Monthly Refinery Report (FEA-P-320-M-O).

For the purpose of Superfund fee collection on domestic oil, a report month is defined as the calendar month in which the Superfund fee is incurred. The fee is incurred on domestic oil when it arrives as input to a refinery. The report month of the Superfund will then coincide with the report month of the Department of Energy refinery report.

As stated previously, the refinery report must be submitted to the Department of Energy by the twentieth calendar day following the report month. Federal excise tax deposits are due on the ninth and twenty-fourth of the month.

Domestic and Foreign Crude Oil Source and Disposition

FIGURE 8



The oil companies will report Superfund fee payments quarterly, on IRS Form 720, the Quarterly Federal Excise Tax Return (modified for Superfund fee reporting and collection). The payments of the Superfund fee will be made on the basis of estimates of crude runs to stills, twice monthly. In the event that these estimates are not within 90 percent of the actual runs, as reported on the Department of Energy Monthly Refinery Report, a substantial penalty will be assessed by the IRS. This penalty is paid at the end of the quarter, when the IRS Form 720 is filed.

Figure 9 graphically depicts the sequence of events for the Superfund fee collection mechanism on domestic crude oil. For example, Superfund fees, incurred during the first 15 days of January, will be deposited by the 24th day of January, with the Federal excise tax deposit. Superfund fees, incurred during the second half of January, will be deposited by the 9th day of February, with the Federal excise tax deposit. The Department of Energy refinery report for January must be filed by the 20th of February. The deposited fee must be at least 90 percent of the fee on the actual throughput or a penalty will be assessed. This same sequence of payment will follow suit through February and March. The oil companies will file IRS Form 720, reporting Federal excise tax and Superfund payments for the quarter, January through March, by the last day of April. The Superfund fee payment must equal \$.03 times the actual number of barrels of domestic crude runs to stills, reported for the quarter. The fee must reconcile with the actual throughput taken from the three previous Department of Energy refinery reports, or a penalty will be assessed by the IRS.

It is recommended that transfer of Superfund revenues on domestic crude oil from the General Fund of the Treasury to a Treasury Superfund account parallel the Department of Treasury's procedure for transfer of motor vehicle-related Federal excise tax revenues to the Highway Trust Fund. Amounts will be transferred at least monthly from the General Fund of the Treasury to the Superfund on the basis of estimates of Superfund revenues by the Secretary of Treasury, and adjusted at the end of the quarter on the basis of actual Superfund receipts.

Superfund Fee Collection Mechanism Sequence of Events

FIGURE 9

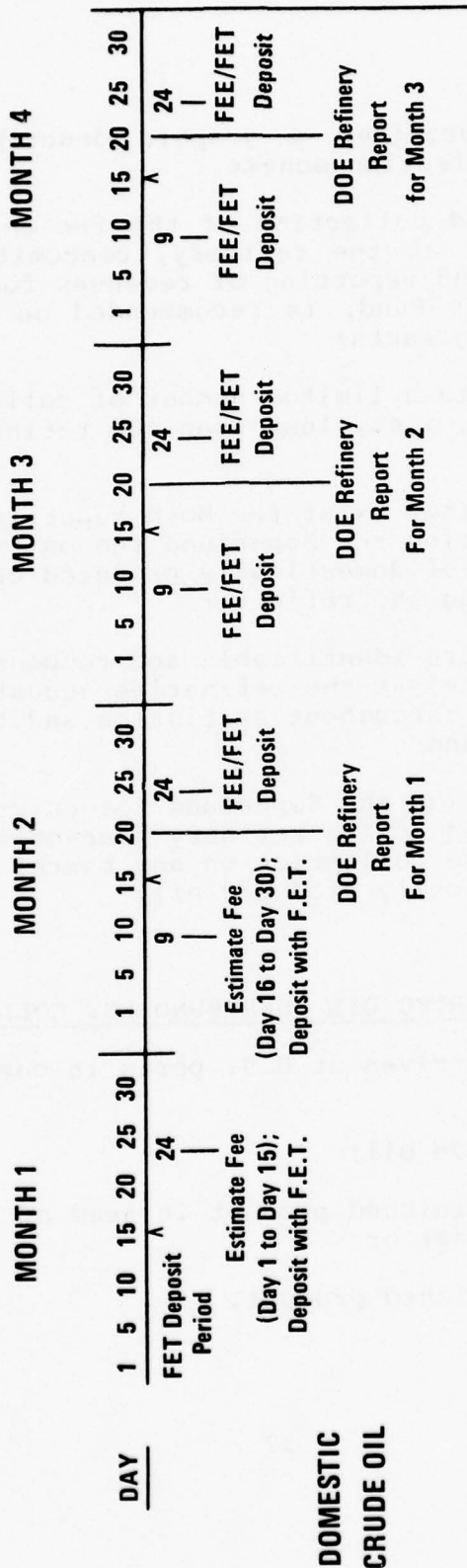


Figure 10 provides a graphic description of the domestic collection scheme.

Reporting and collection of the fee on domestically produced oil at the refinery, concomitant with the collection and reporting of revenues for the Federal Highway Trust Fund, is recommended on the basis of the following facts:

1. There is a limited number of collection points, i.e., less than 400 refinery sites;
2. Mechanisms exist for both reporting and collecting the Superfund fee on the volume of domestically produced crude oil entering the refinery;
3. There are identifiable and responsible personnel at the refineries accustomed to filing throughput statistics and taxation data; and
4. Collecting the Superfund fee on crude oil reported at the refinery guarantees a one time fee collection on any barrel of domestically produced oil.

PROPOSED IMPORTED OIL SUPERFUND FEE COLLECTION

Foreign oil arrives at U.S. ports in one of three forms:

1. As crude oil;
2. As unfinished product in need of further refining; or
3. As finished product.

Superfund Fee Collection Mechanism Domestic Crude Oil

ACTION

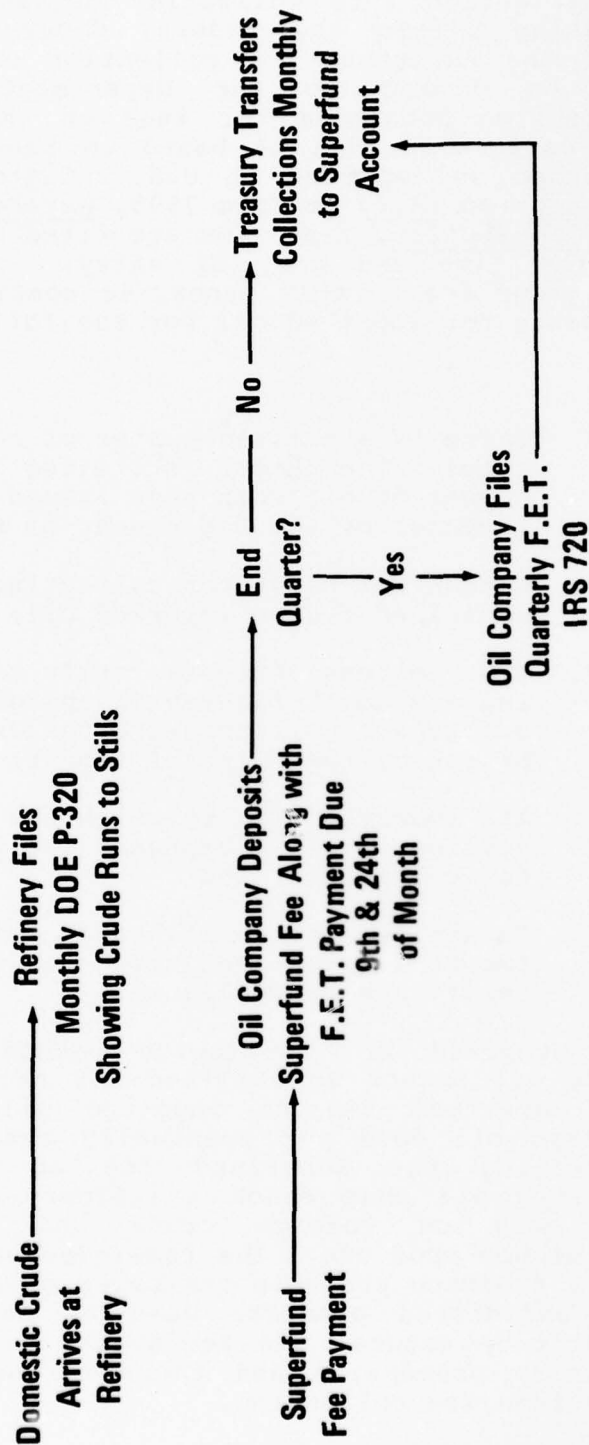


FIGURE 10

Investigation into collection mechanisms presently existing within the Federal Government indicated that the Superfund fee collection on imported oil can be linked to the Department of Energy's collection mechanism for fees on import licenses. Fee collection will be based on the volume of oil reported as imported on U.S. Customs Form 7501, Consumption Entry or Form 7505, Warehouse Withdrawal for Consumption. The forms are filed by the importer at the time and port of entry. Collecting the Superfund fee in this manner is considered the most workable for imported oil for the following reasons:

1. There is a limited number of collection sites. The number is limited to the number of oil companies issued import licenses by the Department of Energy;
2. Mechanisms exist for collecting the Superfund fee on imported oil;
3. U.S. Customs officers verify the reporting company's figures on the quantity and type of oil entering the United States at the point of import;
4. All imported oil, to which the fee applies, will be captured for Superfund fee collection; and
5. Terminals are the points at which the import and the accounting for the import are accomplished.

The proposed fee collection method for domestic crude oil cannot be utilized for the collection of the Superfund fee on imported oil, because all foreign oil does not eventually reach a refinery. Collecting the Superfund fee on quantities of imported oil that reach a refinery would render a fee only on foreign crude and a portion of unfinished products. The remainder of imported oil, e.g., finished products for power plant consumption, and unfinished products used as petrochemical or substitute natural gas feedstock, needs no further refinery processing and therefore would evade the Superfund fee collection.

It is proposed that the Department of Energy mechanism for collecting fees on import licenses be adapted to accommodate the Superfund fee collection on imported oil. The Department of Energy, Office of Oil Imports, would collect the Superfund fee from importers, concurrent with their collection of import license fees, increasing the license fee by amounts equivalent to the Superfund barrel fee. For a \$.03 per barrel fee for example, increase fee-free licenses to \$.03 per barrel; prepaid licenses and licenses issued against a bond from \$.21 to \$.24 per barrel for crude oil; and from \$.63 to \$.66 per barrel on finished and unfinished products.

It is proposed that the monthly statement of account presented to oil importers by the Department of Energy, reflect the Superfund fee in addition to the import license fee. The statement of account will bill importers for Superfund fees incurred on oil imported during the previous month under all fee-free and bonded licenses held by the importer. The Superfund fee will be based on amounts of oil reported on U.S. Customs Forms 7501/7505 by the Importer of Record and certified by Customs officers at the time and port of entry.

It is recommended that monthly payments of Superfund fees be made by the oil companies to the Department of Energy, Office of Oil Imports, concomitant with the payment of import license fees. Payments will be due no later than the last day of the month following the month the fee is incurred. The Superfund fee will be incurred when oil imports are released from customs custody, or withdrawn from warehouse for consumption (Figure 11).

It is recommended that Superfund revenues on imported oil, collected by the Department of Energy, be transmitted within 30 days to the U.S. Treasury and transferred at least monthly by the Treasury to the Superfund account.

There will be costs to the Superfund, incurred by the Department of Energy, for collecting the barrel fee on imported oil: implementation costs for modifying the Department of Energy license fee collection systems for Superfund collection; and recurring costs incurred for processing the Superfund fees. These recurring costs will be exhibited in increased Department of Energy General and Administrative costs. The Fund may reimburse the Department of Energy for administrative costs incurred in Superfund fee collection.

Superfund Fee Collection Mechanism Sequence of Events

**IMPORTED
CRUDE OIL
AND PRODUCTS**

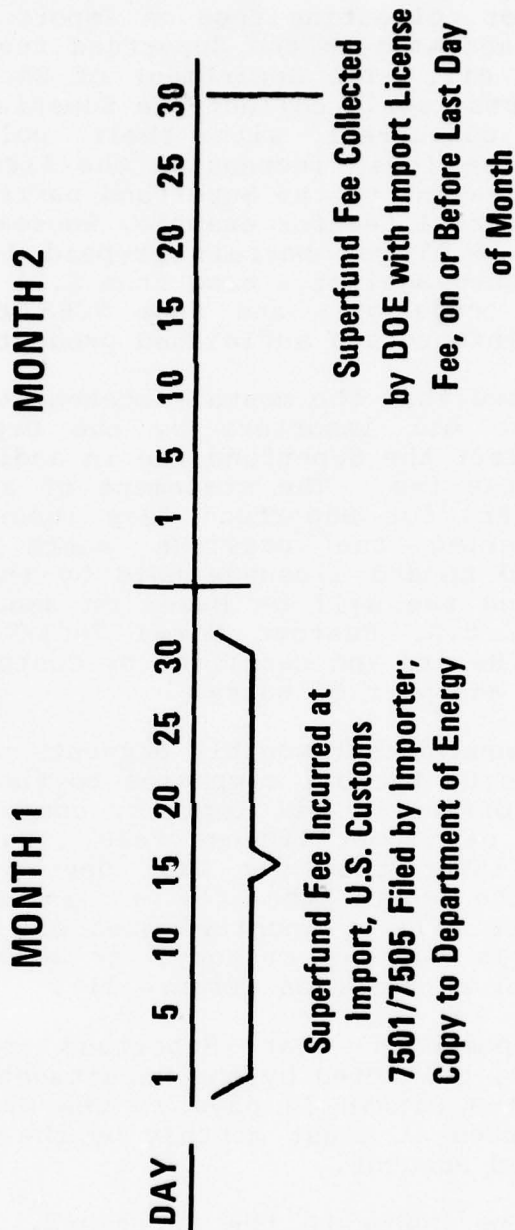
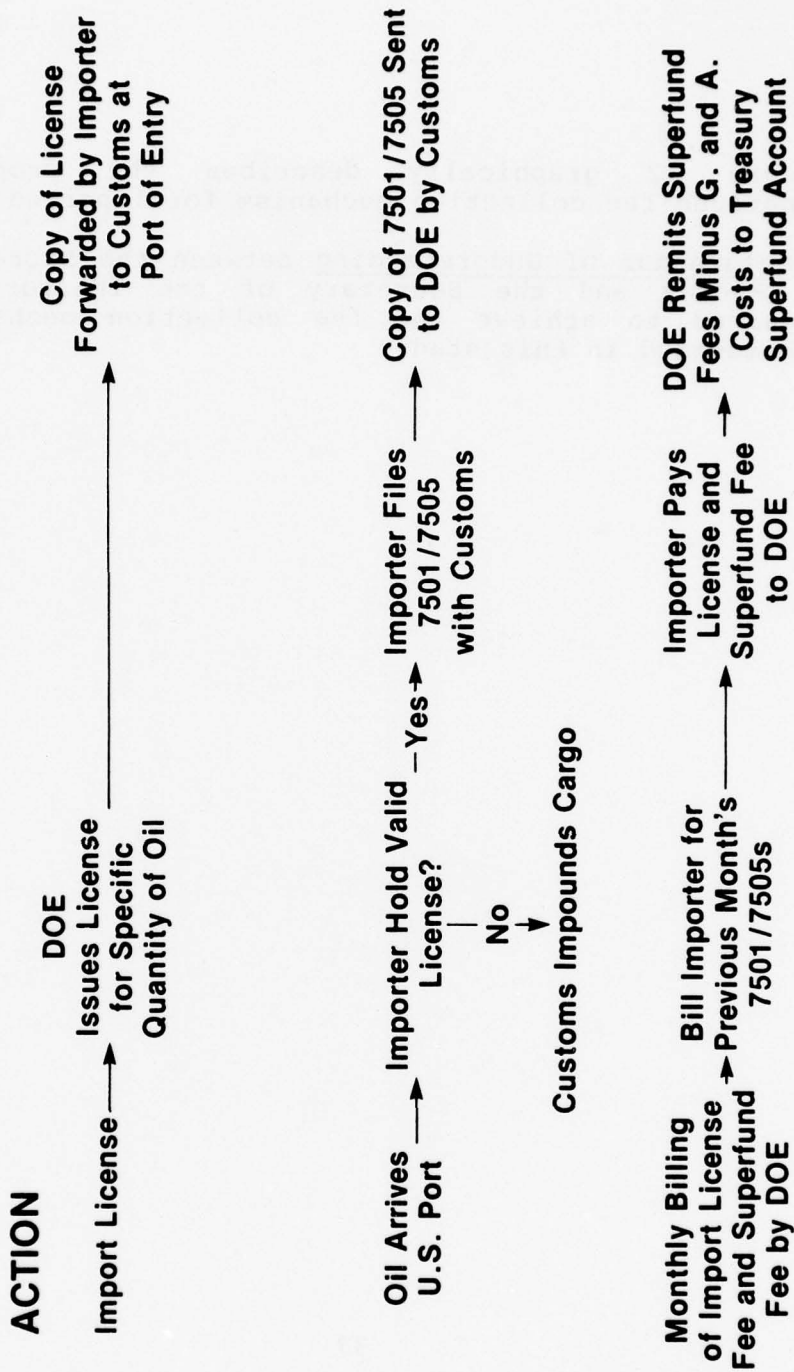


FIGURE 11

Figure 12 graphically describes the proposed Superfund fee collection mechanism for imported oil.

A Memorandum of Understanding between the Secretary of Energy and the Secretary of the Treasury is required to achieve the fee collection mechanism recommended in this study.

Superfund Fee Collection Mechanism Imported Oil and Oil Products



FINDINGS ON DOMESTIC CRUDE OIL EXPORTS AND BONDED FUELS

CRUDE OIL EXPORTS

The Export Administration Act of 1969, as amended, requires the control of commodities to the extent necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand. Crude petroleum is a commodity currently under short supply quota controls. The Department of Commerce, Office of Export Administration, authorizes licenses for commodities subject to quantitative restriction, under authority in 15 CFR 377.6 (Export Administration Regulations, Short Supply Control, Petroleum and Petroleum Products).

CRUDE OIL EXPORT LICENSING PROGRAM

Firms may apply for an export license (Department of Commerce Form DIB-622P) to the Office of Export Administration under the provisions of the Export Administration Regulations, 15 CFR 368 et al.

Presently, "exports" of crude oil are being approved only as part of an exchange for an equal quantity of crude oil with an adjacent foreign state, either Canada or Mexico.

While firms are free to apply for an export license to ship crude oil not subject to the strict limitations specified in the regulations, the Department of Commerce must determine whether such an export is in the National interest. No such determination has yet been made.

A few export licenses have been issued for the shipment of very small amounts (five barrels or less) of crude oil for research purposes.

PROHIBITION TO THE EXPORT OF CRUDE OIL FROM THE
UNITED STATES

There are four separate statutory provisions which specifically restrict exports of crude oil:

- (a) Section 4(l) of the Export Administration Act of 1969, as amended (PL 95-52);
- (b) Section 201 of the Naval Petroleum Reserves Production Act of 1976 (PL 94-258);
- (c) Section 103 of the Energy Policy and Conservation Act (PL 94-163); and
- (d) Section 28(u) of the Mineral Leasing Act of 1920, as amended by the Trans-Alaska Pipeline Authorization Act of 1973 (PL 93-153).

These provisions contain similar language and, with limited exceptions, prohibit exports of crude oil except pursuant to certain Presidential findings. The most restrictive of the four statutory provisions cited above, Section 4(l) of the Export Administration Act, prohibits the export of domestically-produced crude oil which has or will be transported by pipeline over a right-of-way granted pursuant to Section 28(u) of the Mineral Leasing Act of 1920, unless the President makes and publishes an express finding that:

- o a proposed export of crude oil is in the national interest;
- o will not diminish the total quantity or quality of petroleum available to the U.S.;
- o will have a positive effect on consumer oil prices; and
- o will be made only pursuant to contracts which may be terminated in the event U.S. petroleum supplies are interrupted or threatened.

Such a Presidential finding must be transmitted to the Congress as an energy action and may not take effect until the expiration of 60 days of continuous session of both Houses of Congress. If either House passes a resolution disapproving the energy action during this 60 day period, the energy action will not take effect.

CRUDE OIL LICENSES APPROVED UNDER THE EXCHANGE PROGRAM

A noteworthy exception to the prohibition on crude oil exports is the exchange program with Canada. Table 3 is a synopsis of the number of oil export licenses approved, and the quantity of oil exported, from the third quarter of 1976 through the third quarter of 1978.

All crude oil exchanged with Canada is shipped via a pipeline system, normally the Lakehead-Inter-Provincial Pipeline System. Smaller pipeline systems are employed for the return or import of Canadian crude oil for the exchange delivery to our Northern Tier refineries.

SUPERFUND FEE COLLECTION ON EXPORTED DOMESTIC CRUDE OIL

Assessing the Superfund fee may be accomplished by adding a "not to exceed \$.03 per barrel" fee to any export license issued by the Department of Commerce. This mechanism would parallel the proposal for the collection of the Superfund fee by the Department of Energy on import licenses. As in the Department of Energy collection proposal, general and administrative costs would have to be reimbursed to the Department of Commerce for costs incurred in the collection of the Superfund fee.

TABLE 3
CRUDE OIL LICENSES APPROVED FOR
EXCHANGE WITH CANADA
1976 - 1978

<u>YEAR</u>	<u>BARRELS</u>	<u>NO. OF TRANSACTIONS</u>
<u>1976</u>		
3rd Quarter	1,835,000	6
4th Quarter	3,165,000	8
<u>1977</u>		
1st Quarter	3,863,000	18
2nd Quarter	5,637,000	11
3rd Quarter	6,562,000	12
4th Quarter	7,553,000	13
<u>1978</u>		
1st Quarter	9,869,000	17
2nd Quarter	9,694,000	15
3rd Quarter	11,224,000	17

SOURCE: Department of Commerce, Office of Export Administration, Division of Short Supply, Washington, D.C.

The Department of Commerce does not assess a tax or duty on any commodity exported. Article I, Section 9 of the U.S. Constitution prohibits export duties: "No Tax or Duty shall be laid on Articles exported from any State".

All of the legislative proposals before Congress clearly stipulate the collection of a fee, not a duty. Therefore, in this report it is assumed that this fee is neither a tax nor a duty but a pollution insurance premium. It is the intent of Congress to assess the fee on exported oil.

It may appear that a fee on a barrel of oil in an exchange is assessed twice, once upon the export and once upon the import. This is not true. The exported oil poses one threat to the environment; the imported oil in the exchange poses a separate and distinct threat. They are different barrels of oil. Therefore, the fee must be assessed on the export side of the exchange and on the import side. The fee will be assessed once and only once on each barrel exported; and once and only once on each barrel imported.

FEEES ON EXPORTED FINISHED AND UNFINISHED PRODUCTS

The Superfund fee on exported products will have been collected at the refinery or point of entry; therefore, the fee cannot be assessed again upon export.

BONDED FUELS

Bonded fuels are, by law, not within the United States or its jurisdiction and, therefore, the fee will not be assessed unless the bonded fuels enter the commerce of the United States. At that point, they will be treated for the purposes of Superfund fee collection exactly the same as imported finished products.

OPERATION OF THE SUPERFUND

FEDERAL WATER POLLUTION CONTROL ACT (FWPCA) POLLUTION FUND

Oil and other substances are being spilled into the Nation's waters at a reported annual rate of 20 million gallons from 13 thousand incidents (Figure 1). If the discharger is unknown, or if the party responsible for the discharge fails to respond, the Federal Government may assume responsibility for cleanup. The Federal Water Pollution Control Act, Section 311(k), established a revolving pollution fund to provide monies to pay for cleanup only. The Fund is administered by the U.S. Coast Guard.

Table 4 presents a financial summary (balance sheet) of the FWPCA Pollution Fund. From its inception in 1971, a total of \$45.0 million has been appropriated to the fund by Congress. Income to the Fund, from fines, penalties, and cleanup costs recovered from dischargers, totaled about \$19.5 million. Total obligations from 1971 through the second quarter of 1978 are \$53.0 million. These expenditures are for oil pollution response only. At the close of business for the second quarter of 1978, the balance in the Pollution Fund was \$11,533,017.

These data provide a basis to extrapolate future cleanup costs for oil spills only. To date, the Environmental Protection Agency has been unsuccessful in developing and implementing the hazardous substance list required in the legislation establishing the 311(k) Fund. Therefore, no hazardous substance cleanup expenditures are presented in the balance sheet.

PROJECTED SUPERFUND CASH FLOW

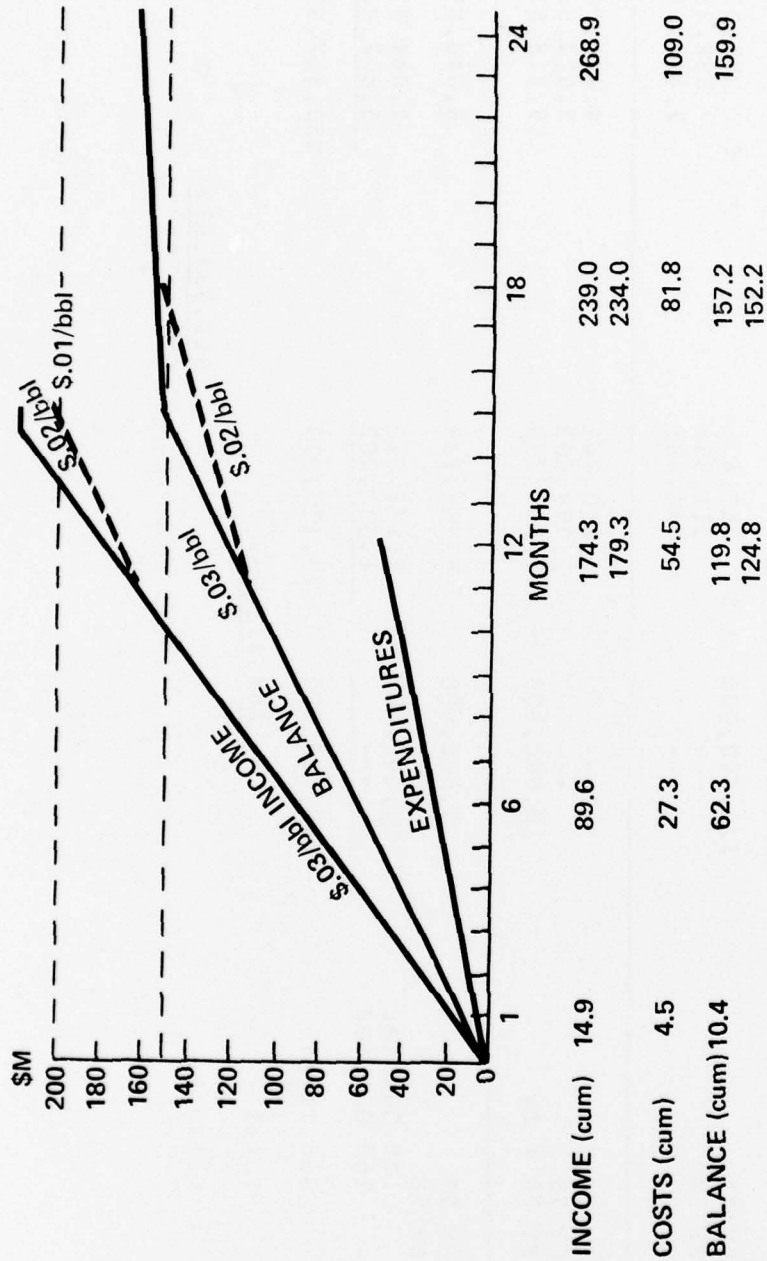
There is no basis (such as exists for oil in the FWPCA Pollution Fund) for projecting future claims for natural resource losses, personal property damage, or hazardous substance cleanup. Therefore, when the cash flow for the Superfund was projected, reasonable assumptions had to be made for these costs. The projected cash flow is exhibited in Figure 13.

FEDERAL WATER POLLUTION CONTROL ACT

Revolving Fund Financial Summary

	The Annual Receipts for the 311(K) Fund		The Annual Obligations for the 311 (K) Fund	
	Appropriation	Collection	Total Obligations	
FY 71	\$20,000,000	+ \$ 47,675	\$	288,255
FY 72	---	311,536		892,292
FY 73	---	634,981		9,439,340
FY 74	---	2,410,741		4,429,964
FY 75	---	1,999,602		7,974,507
FY 76 + Tq	10,000,000	+ 3,650,788		15,318,823
FY 77	5,000,000	6,888,149		8,643,653
FY 78	10,000,000	2,172,512		2,044,113
1st Quarter	---	1,300,003		3,852,023
2nd Quarter				
Sub Total	\$45,000,000	\$19,415,987		\$52,882,970
Total	\$64,415,987			
Balance				\$11,533,017

Superfund Projected Cash Flow



NOTES:

1. FUND BALANCE REFLECTS BARREL FEE COLLECTION ONLY.
2. COSTS REFLECT CLEAN-UP, ADMINISTRATION AND CLAIMS COSTS ONLY.
3. BARREL FEE COLLECTION IS BASED ON 16,599,000 bbls/DAYS FOR 360 DAYS/YEAR.
4. VALUES EXPRESSED IN 1977 CONSTANT DOLLARS.

SOURCE:

ANALYSIS PROVIDED BY ROBERT ANTHONY,
UNITED STATES COAST GUARD, WASHINGTON, D.C.

FIGURE 13

Assumptions were made for both projected income and projected costs and are shown below.

Superfund Income Assumptions:

- o Income projections are based on barrel fee collections only. (Actual income will not only be realized from the barrel fee but also from reimbursement for costs of cleanup, claims payment, litigation, penalties, fines, as well as interest earned on investments, not shown in figure 13).
- o There is a total consumption of 16,599,000 barrels per day in the United States consisting of domestic crude oil production and imported crude oil and products. These data are based on Department of Energy statistics.

Superfund Expenditure Assumptions:

- o Expenditure projections are based on cleanup, administration, and claims costs only. In addition to these costs, there will be costs incurred for interest payment on loans, claims adjustor fees, and litigation costs.
- o There are approximately 10,660 oil spill incidents annually. Of these, 7,685 are spills from known sources and 2,975 are unknown or mystery spills.
- o Ten percent of spills from known sources will be denied by the spiller and will be handled by the Fund.
- o All mystery spills will be handled by the Fund.
- o There will be an average of five claims per spill.
- o Ten percent of all claims presented to a spiller will not be settled to the satisfaction of the claimant and will revert to the Fund for settlement.

- o Discussion with claims adjustors and oil company representatives indicated that their average cost per claim did not exceed \$50. This estimate appears low. An estimate was made that, in a "worst case" situation, the average cost of a claim would not exceed \$2,000.
- o The estimated annual cost to the Superfund fee for pollution removal is \$9.0M. This cleanup cost estimate reflects the annual cost of cleanup for oil spills incurred by the Coast Guard and expended from the FWPCA Section 311(K) Pollution Fund from 1974 through the second quarter of 1978. The Pollution Fund expenditures are demand oriented. This "back-casting" provides the historic expenditures and represents the only tool for estimating future expenditures.
- o The cost of administering the Superfund is estimated at \$1.2 M per year. This includes personnel costs for approximately 50 people.

Based on these assumptions, the annual income and expenditures are:

<u>Annual Income</u>	(Barrel Fee Collection Only)
16,599,000 bbl/day x 360 days/yr. = 5,975,640,000 bbl/yr.	
5,975,640,000 bbl/year x \$.03/bbl = \$179,269,200/year	
5,975,640,000 bbl/year x \$.02/bbl = \$119,512,800/year	
5,975,640,000 bbl/year x \$.01/bbl = \$59,756,400/year	

Annual Expenditures:

1. Cleanup Costs: \$ 9.0 M

2. Administrative Costs: \$ 1.2 M

3. Claims Costs:

Total Spills:	10,660
Spills Handled by the Fund (10% x 7,685 spills from known sources plus mystery spills)	- 3,743
Spills Handled by the Spiller	<u>6,917</u>
Claims per Spill	x 5
Claims Handled by the Spiller	<u>34,585</u>
% of Claims not Settled by the Spiller	<u>x .10</u>
Claims Presented to the Fund After Unsatisfactory Settlement with the Spiller	<u>3,459</u>

Total Claims to the Fund:	
Claims Presented to the Fund After Unsatisfactory Settlement with the Spiller	3,459
Spill Handled by the Fund x 5 Claims/Spills	<u>18,715</u>
Number of Claims	<u>22,174</u>

Cost of Claims:		
Number of Claims	22,174	
Average Cost	<u>x \$ 2,000</u>	
Total Cost of Claims to the Fund	\$44,348,000	<u>\$44.3M</u>
		<u>\$54.5M</u>

Figure 13 shows the projected cash flow to the Superfund from the time of implementation through a two year period (excluding a start-up appropriation, borrowing, and money received from other funds). The top angular line (Labeled INCOME) reflects the cumulative barrel fee income to the fund. The bottom line (Labeled EXPENDITURES) shows cumulative costs to the Superfund for administration, claims, and cleanup. The center line is the balance line (Labeled BALANCE), the net between gross barrel fee collections and expenditures and indicates the cumulative amounts accruing to the fund. If the fee remains at \$.03/bbl, the \$150.0 M mark, which is the minimum amount required in the fund, will be reached approximately 15 months after implementation. The legislation states that the fund shall not exceed \$200.0 M. The financial control to prevent overshooting this limit is the reduction of the fee to something less than \$.03 per barrel. The balance line in the graph indicates the effect of the fee income "control valve".^{7/}

A notice of fee modification must be published in the Federal Register 90 days prior to either increasing or decreasing the fee. This 90 day safeguard is provided to prevent speculation on the Superfund fee changes.

SUMMARY
AND
CONCLUSIONS

The following table (Table 5) provides a graphic depiction of the reporting and collection mechanism proposed in this study for the oil pollution liability and compensation legislation.

TABLE 5

SUPERFUND

FEE COLLECTION STUDY

PROPOSED REPORTING AND COLLECTION MECHANISM

	DOMESTIC CRUDE OIL	IMPORTED CRUDE OIL AND PRODUCTS	EXPORTED DOMESTIC CRUDE OIL
REPORTING MECHANISM	Department of Energy Monthly Refinery Report (P320)	U.S. Customs Forms: 7501 Consumption Entry 7505 Warehouse Withdrawal for Consumption	Documentation required by 15 CFR, Part 377.6 (e)(1) <u>Export Administration</u> <u>Regulations</u> , <u>Petroleum and</u> <u>Petroleum Products</u> , <u>Documentation</u>
COLLECTION MECHANISM	Fee Paid Twice Monthly by Refinery; Deposited with FET Payment Due the 9th & 24th of the Month; Reported Quarterly, IRS FET Form 720, Deposited in US Treasury Superfund Account	Fee Collected by Department of Energy via Increase in Import License Fee Deposited in US Treasury Superfund Account (Minus DOE G&A Costs)	Fee Collected by Department of Commerce via Export License Deposited in US Treasury Superfund Account (Minus DOC G&A Costs)
REQUIREMENT	Modification of IRS Form 720 Quarterly Excise Tax Return	Memorandum of Understanding between the Depart- ment of Treasury and the Department of Energy for Collection	Memorandum of Under- standing between the Department of Treasury and the Department of Commerce for collection

FOOTNOTES

- 1/ CAPT Frederick P. Schubert, United States Coast Guard
"IMCO and the Evolving International Scheme for Controlling
Marine Pollution", Proceedings, 1977 Oil Spill Conference,
American Petroleum Institute, Washington, D.C., 1977.
- 2/ Other Substances includes any substance discharged other than
oil, i.e., chemicals, dredged spoil, solid waste, sewage, and
garbage. The complete listing is found in CG-450, Pollution
Incident Reporting System, Coding Instruction Manual.
Department of Transportation, U.S. Coast Guard, 1976.
- 3/ James S. Mattson, Compensating States and the Federal
Government for Damages to Natural Resources Resulting from
Oil Spills, National Oceanic and Atmospheric Administration,
Washington, D.C., 1978.
- 4/ President Jimmy Carter, Message to Congress, The White House,
Washington, D.C., 17 March 1977.
- 5/ Office of the White House Press Secretary, Actions to Reduce
Maritime Oil Protection, The White House, Washington, D.C.,
18 March 1977.
- 6/ 95th Congress, 1st Session, H.R. 6803, An Act, Senate of the
United States, Referred jointly to the Committees on Commerce,
Science, and Transportation, and Environment and Public Works,
13 September 1977.
- 7/ Analysis provided by Anthony, Robert, United States
Coast Guard, Washington, D.C.

APPENDIX A

CONSIDERATIONS

OF THE

DEPARTMENT OF COMMERCE

DEPARTMENT OF ENERGY

DEPARTMENT OF THE TREASURY



UNITED STATES DEPARTMENT OF COMMERCE
Industry and Trade Administration
Washington, D.C. 20230

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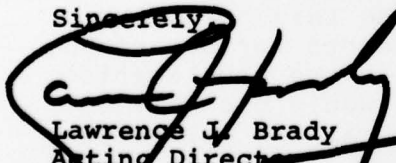
Mr. F. P. Schubert
Captain, U.S. Coast Guard
Acting Chief, Office of Marine Environment
and Systems
Department of Transportation
U.S. Coast Guard
Washington, D.C. 20590

Dear Mr. Schubert:

This is to convey to you this Department's approval of the general method of collection of a fee on domestic crude oil exports in the establishment of an oil pollution liability and compensation fund (Superfund) as proposed by your Office in the August 1978 Final Report entitled "A Fee Collection Mechanism for the Oil Pollution Liability and Compensation Legislation" provided to us under cover of your letter of August 18.

At this time, our approval extends only to the proposed general method of collection. It is anticipated that a Memorandum of Understanding between the Secretary of Commerce and the Secretary of Treasury will be prepared following the enactment of legislation establishing the Superfund. It is our understanding that this memorandum will specify the administrative procedures to be followed by each agency, and the resources to be provided in support of those procedures.

Sincerely,


Lawrence J. Brady
Acting Director
Office of Export Administration
Bureau of Trade Regulation



Department of Energy
Washington, D.C. 20461

RECEIVED

70 SEP 28 P 3: 38

SEP 26 1978

Captain F. P. Schubert
U.S. Coast Guard (G-WEP-1/73)
Acting Chief, Office of Marine
Environment and Systems
Washington, D.C. 20590

Dear Captain Schubert:

I have reviewed your proposed recommendation for A Fee Collection Mechanism for the Oil Pollution Liability and Compensation Legislation. In general, I find that the report covers the oil import mechanism very adequately; however, there are some minor changes that I would like to recommend.

At the bottom of page 23, the last two sentences read: "The importer receives a license from the Department of Energy. A copy is sent to the District Director of Customs at the point of entry for customs processing." I suggest the wording of the last sentence be changed to read: "The license must then be presented to the District Director of Customs at the point of entry for Customs processing and decrementation."

On page 34, item #4 in the middle of the page states "On imported oil at which the fee applies will be captured for Superfund fee collection." I would like to point out that the Oil Import Program does not control ethane, propane, butane and asphalt. You may wish to note this omission. If it is necessary to license these products for Superfund, this could be covered through a change in the proclamation. Actually the change in the proclamation would probably be required in order for this office to act as the collecting agency for Superfund.

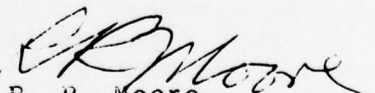
On page 35, the next to last paragraph recommends that any revenues collected by the Department of Energy be transmitted within 30 days to the U.S. Treasury. Under our current operation, fees collected are normally deposited into the U.S. Treasury the following working day.

On page 43, you state that with regard to Canadian crude oil exchanges the fee should be assessed both on the import side and the export side. I find this to be inconsistent with the stated goal of collecting the fee only once on each barrel of oil. In all cases the oil being exported to Canada is replaced in the system by an imported barrel either into the gulf coast or east coast on which the fee will be paid. In many instances the barrel being exported to Canada will actually be the same that was imported. Certainly in the latter case this barrel of oil is being assessed the fee twice. By contrast I note that product exports are not being assessed the fee on the theory that the crude from which they were manufactured has already been assessed the fee. I find the treatment of products and crude to be inconsistent.

Also on page 43, you address the question of bonded fuels. The landing of bonded fuels whether to be used for fueling ships, aircraft in international travel or pipeline transportation to Canada poses the same threat to the environment as any other fuel movements. Persons who put fuels or any other petroleum products into bonded storage are required to pay the U.S. Customs Service for the expenses associated with monitoring any movement of material in and out of the tanks. Would it not be possible to add the Superfund fee to the Customs service charge?

My staff and I have enjoyed working with Mr. Christensen and Ms. Froehlich on the Superfund study. If we can be of further assistance, please call on us.

Sincerely,


R. R. Moore
Director
Office of Oil Imports



DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

SEP 14 1978

Dear Captain Schubert:

Thank you very much for allowing us to review and comment on A Fee Collection Mechanism for the Oil Pollution Liability and Compensation Legislation. Your staff is to be commended for a thorough job encompassing areas of expertise under various executive departments.

My staff has reviewed the portions of the report relating to Treasury responsibilities. They believe the following five issues require further clarification and resolution:

1. Under the structure suggested by the report, the fee on imports would be paid to the Department of Energy. The major reason given for this proposal is that the Department of Energy already collects fees relating to imported oil. However, it is also true that Customs' duties are collected on all imported oil. Since the Customs Service is within the Treasury Department, and the Treasury Department is the collection agent for the Superfund fee under the statute, it seems preferable to us to have the Customs Service collect the Superfund fee along with the customs duty on imported oil. Since we see no practical problem in effecting such a procedure, we see no reason to relate the collection of Superfund fees to a collection system outside the Treasury.

2. Related to the first question is the issue of whether tasks which are assigned to the Treasury under the bill can be delegated to other departments. Discussion of this issue has already taken place between my staff and yours. Certainly if such delegation cannot take place, there is no reason to consider what those alternative procedures might be.

3. Not all versions of the Superfund bill appear to provide for payment of expenses out of the Superfund. We believe that, if the payment of expenses is not authorized from the Superfund, it will not be permissible for Treasury to pay such expenses to the Department which, for example, incurs the cost of collection.

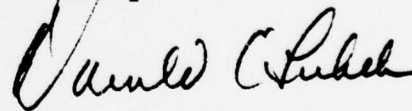
4. We would like to explore some alternatives to the treatment in the report of the collection of amounts, even if they are denominated "fees", which are levied on exports.

5. Finally, it is not clear to us that "inputs" at a refinery are precisely what the law refers to as amounts "received" by a refinery. We would hope to clarify this point with your staff and the staff of the Department of Energy in the near future.

In addition to the above, there are a number of minor editorial changes which my staff would like to suggest regarding the language in certain Treasury-related sections of the bill.

Once again, my compliments to you and your staff for the thorough report which you have sent over. I would hope that we can resolve the few remaining issues in the near future.

Sincerely,



Donald C. Lubick
Assistant Secretary (Tax Policy)

Captain F. P. Schubert
Acting Chief, Office of Marine
Environment and Systems
United States Coast Guard (G-WEP-1/73)
Washington, D.C. 20590